

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



CARMEN BAPRAWSKI,

Charging Party,

v.

LOS ANGELES COMMUNITY COLLEGE
DISTRICT,

Respondent.

Case No. LA-CE-5423-E

PERB Decision No. 2219

November 15, 2011

Appearances: Carmen Baprawski, on her own behalf; Atkinson, Anderson, Loya, Ruud & Romo by Joshua E. Morrison, Attorney, for Los Angeles Community College District.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Carmen Baprawski (Baprawski) to a proposed decision (attached) by a PERB administrative law judge (ALJ) dismissing the complaint and underlying unfair practice charge. The charge and complaint alleged that the Los Angeles Community College District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ by relocating Baprawski's office in retaliation for her having filed a grievance and unfair practice charges against the District and for participating in a PERB settlement conference and formal hearing. The ALJ determined that Baprawski failed to establish a prima facie violation of EERA.

The Board has reviewed the ALJ's proposed decision and the record in light of Baprawski's exceptions, the District's response thereto, and the relevant law. In her

¹ EERA is codified at Government Code section 3540 et seq.

exceptions, Baprawski primarily disputes the ALJ's factual findings. The Board normally gives deference to the ALJ's factual findings involving credibility determinations unless they are unsupported by the record as a whole. (*State of California (Department of Corrections & Rehabilitation)* (2010) PERB Decision No. 2136-S; *Anaheim City School District* (1984) PERB Decision No. 364a.) Having thoroughly reviewed the entire record in this matter, we conclude the ALJ properly weighed the evidence presented by the parties at hearing. We also agree with the ALJ's credibility determinations. In particular, we agree with the ALJ's determination crediting the testimony of Vice President of Student Services Lawrence Bradford (Bradford) over that of Baprawski on the issue of employer knowledge. Bradford testified clearly and consistently that he had no knowledge of Baprawski's protected activity in filing a grievance and two unfair practice charges. While Baprawski testified generally that, when she saw Bradford two or three times a week during some unspecified time period, she "would speak with him and what was going on with me and with PERB and with my grievance," she failed to describe any specific conversations she had with Bradford. Accordingly, based upon our review of the record, we find the proposed decision to be well-reasoned, adequately supported by the record, and in accordance with applicable law. Accordingly, the Board adopts the ALJ's proposed decision as the decision of the Board itself.

ORDER

The complaint and underlying unfair practice charge in Case No. LA-CE-5423-E are hereby DISMISSED.

Chair Martinez and Member Huguenin joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



CARMEN BAPRAWSKI,

Charging Party,

v.

LOS ANGELES COMMUNITY COLLEGE
DISTRICT,

Respondent.

UNFAIR PRACTICE
CASE NO. LA-CE-5423-E

PROPOSED DECISION
(6/16/2011)

Appearances: Carmen Baprawski, on her own behalf; Atkinson, Anderson, Loya, Ruud & Romo by Joshua E. Morrison, Attorney, for Los Angeles Community College District.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, an employee alleges that her employer retaliated by relocating her office, in violation of Educational Employment Relations Act (EERA) section 3543.5(a).¹ The employer denies any violation of law.

Carmen Baprawski (Baprawski) filed an unfair practice charge against the Los Angeles Community College District (District) on February 8, 2010. The Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued an unfair practice complaint (complaint) against the District on October 4, 2010. The District filed an answer to the complaint on October 15, 2010.

PERB held an informal settlement conference on November 4, 2010, but the case was not settled. PERB held a formal hearing on March 29 and 30, 2011. After briefing, the case was submitted for decision on June 6, 2011.

¹ EERA is codified at Government Code section 3540 et seq.

FINDINGS OF FACT

The District is a public school employer under EERA. Baprawski was an employee under EERA until her retirement on June 4, 2010.

The complaint alleges in part:

3. Charging party [Baprawski] exercised rights guaranteed by the Educational Employment Relations Act by: filing a grievance, through her union, against Respondent [the District] on September 14, 2004, filing an unfair practice charge with PERB against Respondent on April 6, 2005, filing an unfair practice charge with PERB against Respondent on September 9, 2005, participating in an informal settlement conference conducted by PERB on February 21, 2006, and testifying at a formal hearing before PERB on May 30, 2006.

In its answer, the District admits “each and every” of these allegations. The complaint further alleges:

4. On or about August 17, 2009, Respondent, acting through its agents, Counseling Department Chair Reri Pumphery [sic], President Jamillah Moore, and Vice President of Student Services Lawrence Bradford, took adverse action against Charging Party by relocating her office from Room 108 of the Cesar Chavez Administration Building to Room 122 of Clausen Hall.

In its answer, the District denies “generally and specifically each and every” of these allegations. The complaint finally alleges:

5. Respondent took the actions described in paragraph 4 because of Charging Party’s activities described in paragraph 3, and thus violated Government Code section 3543.5(a).

The District also denies these allegations.

Before retirement, Baprawski worked for the District as a counselor for many years.

In 2000, she went on an extended illness leave. In 2003, she returned from leave to the same work location: Administration Building room 108 (AD 108), a suite of small offices where

general counseling was provided. Specialized counseling was given at various other locations around the campus.

From 2004 to 2006, Baprawski engaged in the protected conduct alleged in the complaint: a grievance and two unfair practice charges. On September 1, 2007, she again took an extended illness leave. When she returned from leave on August 17, 2009, she returned not to AD 108 but to Clausen Hall room 122 (CH 122), a larger one-person office that was not part of a suite. Financial aid and some specialized counseling was done on the same floor of the building.

Baprawski was assigned to CH 122 by Reri Pumphrey (Pumphrey), Chair of the Counseling Department. The assignment was approved by Lawrence Bradford (Bradford), Vice President of Student Services. On August 6, 2009, Pumphrey sent Bradford an electronic mail message about Baprawski, stating in part:

Our offices are fully occupied with the latest addition of on-line counseling and veteran's counseling taking effect this fall. Having said that upon Carmen's [Baprawski's] return I plan on having her housed in an office space we have in Clausen Hall. I'm working with Jeremy [in the financial aid office] to see this opportunity of having financial aid students take advantage of meeting a counselor with close proximity to Financial Aid to discuss ed planning, appeals, disqualifications, etc. Flexibility in where we counsel appears to be with us for a while as we face office challenges.

On the same day, Bradford replied:

As you may be aware, the agreement stipulates that Counselors should be assigned to offices that provide both visual and auditory privacy; in addition to desk, a chair, access to a computer with internet and intranet; a telephone with voice mail and secure file and storage equipment. So we need to talk. Assigning her to financial aid is o.k. because this is where the "need" is and you have no office space in general counseling. What should be emphasized is that she is still part of "general counseling" working in the financial aid office.

The evidence supports the statements of Pumphrey and Bradford that there was no unoccupied private space in AD 108, and this was the reason Baprawski was assigned to CH 122. There is no evidence that anyone other than Pumphrey and Bradford was directly involved in the assignment.

On August 17, 2009, when Pumphrey told Baprawski that she would be working in CH 122, Baprawski was enthusiastic. According to Pumphrey:

She said I love it. I'm thinking I love the idea. She said I wanted to do something like this, but I didn't know how to ask you.

Baprawski did not deny saying this. Her only explanation was that she thought she would be doing financial aid counseling, not general counseling, in CH 122.

When Pumphrey took Baprawski to CH 122, they were joined by Bradford. According to both Pumphrey and Bradford, Baprawski had no complaints about working in CH 122. Baprawski acknowledges that Pumphrey later made clear that she would be doing general counseling, not financial aid counseling, but Baprawski still did not complain about working in CH 122. Baprawski explained that she thought complaining would endanger her health and her job.

Baprawski testified that in CH 122 she "felt lonely, isolated, punished." There was no objective evidence, however, that a reasonable person would find CH 122 to be a bad place to work.

Pumphrey became Counseling Department Chair in July 2008. She had no involvement with or knowledge of Baprawski's grievance and unfair practice charges in 2004-2006. Bradford became Vice President of Student Services in August 2009. He also had no involvement with Baprawski's grievance and unfair practice charges in 2004-2006. Baprawski testified that she chatted with Bradford about her unfair practice charges, but Bradford denied

that such conversations took place. On this point, I credit Bradford's testimony over that of Baprawski.

ISSUE

Did the District retaliate against Baprawski by relocating her office?

CONCLUSIONS OF LAW

To demonstrate that an employer discriminated or retaliated against an employee in violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210; *Campbell Municipal Employees Assn. v. City of Campbell* (1982) 131 Cal.App.3d 416; *San Leandro Police Officers Assn. v. City of San Leandro* (1976) 55 Cal.App.3d 553.) In determining whether evidence of adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (*Palo Verde Unified School District* (1988) PERB Decision No. 689 (*Palo Verde*).) In a later decision, the Board further explained that:

The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment.

(*Newark Unified School District* (1991) PERB Decision No. 864; emphasis added; fn.

omitted.)

As the charging party, Baprawski has met her first burden in this case: she exercised rights protected by EERA. The District admitted that in 2004-2006 Baprawski engaged in protected conduct: a grievance and two unfair practice charges.

Baprawski has not, however, met her second burden: to prove that the District had knowledge of her protected conduct. The relevant District actors were Pumphrey and Bradford. The evidence showed that Pumphrey had no knowledge of Baprawski's protected conduct, and I credit Bradford's testimony that he also had no such knowledge.

Baprawski also has not met her burden of proving that the District took adverse action against her. Although Baprawski testified she felt "lonely, isolated, punished" by working in CH 122, there was no objective evidence that a reasonable person would find it to be a bad place to work. In *Palo Verde, supra*, a teacher alleged that the relocation of his extra-duty office constituted an adverse action, but PERB refused to give weight to the teacher's subjective view that he suffered a loss of prestige due to the relocation. (See *State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2106-S.) Similarly, I do not give weight to Baprawski's subjective feelings of loneliness, isolation and punishment.

Finally, Baprawski has not met her burden of proving that the District took action because of her protected activities. The evidence showed only one reason for Baprawski's assignment to CH 122: there was no unoccupied private space in AD 108. Baprawski has thus failed to prove retaliation in violation of EERA section 3543.5(a). The case must therefore be dismissed.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and the underlying unfair practice charge in Case No. LA-CE-5423-E, *Carmen Baprawski v. Los Angeles Community College*, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Thomas J. Allen
Administrative Law Judge